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## OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE

### Attorney General Opinion No. 25-IB13

February 28, 2025

#### VIA EMAIL

Lee Lifeng Hsu  
[lee.hsu@yahoo.com](mailto:lee.hsu@yahoo.com)

#### **RE: FOIA Petition Regarding the Delaware Department of Insurance**

Dear Mr. Hsu:

We write in response to your correspondence alleging that the Delaware Department of Insurance violated Delaware's Freedom of Information Act, 29 *Del. C.* §§ 10001-10008 ("FOIA"). We treat your correspondence as a Petition for a determination pursuant to 29 *Del. C.* § 10005 of whether a violation of FOIA has occurred or is about to occur. For the reasons set forth below, we determine that the Department did not violate FOIA by denying access to the requested records.

#### **BACKGROUND**

On December 11, 2024, you submitted your first request to the Department seeking various data records related to insurance claims and complaints in Delaware. The request notes that it was inspired by a report produced by the Insurance Information Institute and the National Association of Insurance Commissioners ("NAIC") that highlights significant trends in this area. You seek to understand the specifics for Delaware. The request sought aggregated data for all insurance claims categorized by insurance type and with respect to homeowners' insurance, sought the number of homeowner insurance policies issued, number of homeowner insurance claims filed, aggregated consumer complaint data (including the nature of the complaint and resolution status), water intrusion claims and complaints, market conduct examination reports, and summary of enforcement actions. The following day, the Department denied access to the requested records, stating the Department is not required to answer questions or to create new reports or records. In

addition, the response stated, “[a]s an accommodation, please be advised that the Department has no responsive records to the FOIA request.”<sup>1</sup>

On December 20, 2024, you submitted a revised request, noting that given modern database systems, neither extracting information based on specific criteria, querying an existing database, nor providing raw data constitutes creating a new record. You requested the following:

1. A list of the names of all databases owned, used, or maintained by the Department in connection with insurance matters. . . .
2. Metadata for the databases related to insurance complaints, fraud, auto insurance, and homeowner insurance. This metadata includes only the names and structures of the data fields (e.g., database names, table names, and field names) and does not contain any substantive data. . . .<sup>2</sup>

The Department responded on January 9, 2025, reiterating that FOIA does not require a public body to answer questions or to create new reports or records. The Department also noted that to the extent you seek insurance complaints in the second item, those records are exempt pursuant to 29 *Del. C.* § 10002(o)(3), and fraud investigatory records are exempt pursuant to 18 *Del. C.* § 2406(a). Finally, the Department stated, as an accommodation, it has no records responsive to this revised request. This Petition followed.

In the Petition, you allege that your revised request was reasonable and in compliance with FOIA’s standards. You contend the metadata and database descriptions do not fall under the cited exemptions for investigatory files and confidentiality, nor do they contain substantive investigatory data. Further, you assert that the Department’s refusal to provide even basic database descriptions is an overbroad application of the exemptions and is inconsistent with the Delaware Supreme Court’s guidance favoring transparency. You request that this Office review the December 20, 2024 FOIA request.

On February 11, 2025, the Department, through its legal counsel, replied to the Petition and enclosed the affidavit of its Deputy Insurance Commissioner (“Response”). The affidavit states that the Deputy Commissioner adopts the facts and arguments in the Response. The Deputy Commissioner specifically attests that “the Department has no records responsive to the FOIA request because the databases and their respective metadata which house Department data are owned, managed, and operated by third parties.”<sup>3</sup> The Response states that the NAIC owns,

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<sup>1</sup> Petition.

<sup>2</sup> *Id.*

<sup>3</sup> Response, Aff. of Deputy Insurance Commissioner dated Feb. 11, 2025. The Response also states that the “Department databases related . . . ‘to insurance complaints, fraud, auto insurance, and homeowner insurance’ are all owned, operated, and managed by third parties.”

operates, and manages State Based Systems (“SBS”) which houses all the Department’s data specific to insurance complaints and producer licensing; SBS is publicly available online. The Department asserts that NAIC also owns, operates, and manages the Systems for Electronic Rates and Forms Filing (“SERFF”), which houses all the Department’s data and forms related to premium rate and form filings with respect to, among others, auto and home insurance; SERFF is publicly available online. The Department says that Aithent, another third-party provider, owns, operates, and manages the database that houses the Department’s fraud data. Because the Department does not own, operate, or manage these databases, the Department asserts that it “does not have possession of and has no records with respect to any metadata from those databases.”<sup>4</sup>

## DISCUSSION

FOIA requires that citizens be provided reasonable access to and reasonable facilities for the copying of public records.<sup>5</sup> The public body has the burden of proof to justify its denial of access to records.<sup>6</sup> In certain circumstances, a sworn affidavit may be required to meet that burden.<sup>7</sup>

In this case, the Department provided its Response under oath and named the databases associated with your request.<sup>8</sup> The Department provided a sworn statement from the Deputy Insurance Commissioner that “the Department has no records responsive to the FOIA request because the databases and their respective metadata which house Department data are owned, managed, and operated by third parties.”<sup>9</sup> The Department is not obligated under FOIA to provide records it does not possess or control.<sup>10</sup> On the basis of this sworn evidence, we find that the Department did not violate FOIA by denying access to the requested records.

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<sup>4</sup> Response.

<sup>5</sup> 29 *Del. C.* § 10003(a).

<sup>6</sup> 29 *Del. C.* § 10005(c).

<sup>7</sup> *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996 (Del. 2021).

<sup>8</sup> We note that, although the Department denied the first item in your request for the list of databases, the Department, in this Response, references the three databases related to your request that the Department uses. *See supra* note 3.

<sup>9</sup> Response, Aff. of Deputy Insurance Commissioner dated Feb. 11, 2025.

<sup>10</sup> *Vanella v. Duran*, 2024 WL 5201305, at \*6 (Del. Super. Dec. 23, 2024).

**CONCLUSION**

For the foregoing reasons, we conclude that the Department did not violate FOIA by denying access to the requested records.

Very truly yours,



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Daniel Logan  
Chief Deputy Attorney General

cc: Kathleen P. Makowski, Deputy Attorney General  
Dorey L. Cole, Deputy Attorney General